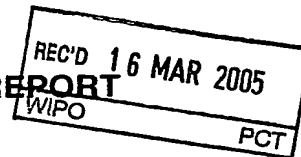




PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)



Applicant's or agent's file reference ASHL001QPC		FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA416)	
International application No. PCT/US 03/35029	International filing date (day/month/year) 04.11.2003	Priority date (day/month/year) 04.11.2002	
International Patent Classification (IPC) or both national classification and IPC A61L2025			
Applicant ASHLAND INC. et al.			
<p>1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 6 sheets, including this cover sheet.</p> <p><input checked="" type="checkbox"/> This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).</p> <p>These annexes consist of a total of 3 sheets.</p>			
<p>3. This report contains indications relating to the following items:</p> <p>I <input checked="" type="checkbox"/> Basis of the opinion</p> <p>II <input type="checkbox"/> Priority</p> <p>III <input checked="" type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p>IV <input type="checkbox"/> Lack of unity of invention</p> <p>V <input checked="" type="checkbox"/> Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p>VI <input type="checkbox"/> Certain documents cited</p> <p>VII <input type="checkbox"/> Certain defects in the international application</p> <p>VIII <input type="checkbox"/> Certain observations on the international application</p>			
Date of submission of the demand 01.06.2004		Date of completion of this report 15.03.2005	
Name and mailing address of the International preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer Uiber, P Telephone No. +49 89 2399-2117 	

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. **PCT/US 03/35029**

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-16 as originally filed

Claims, Numbers

1-25 received on 25.11.2004 with letter of 23.11.2004

Drawings, Sheets

1/8-8/8 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

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5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application,

☒ claims Nos. 14-25

because:

☒ the said international application, or the said claims Nos. 14-25 (IA) relate to the following subject matter which does not require an international preliminary examination (specify):

see separate sheet

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

☐ no international search report has been established for the said claims Nos.

2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

☐ the written form has not been furnished or does not comply with the Standard.

☐ the computer readable form has not been furnished or does not comply with the Standard.

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	14-25
	No: Claims	1-13
Inventive step (IS)	Yes: Claims	14-25
	No: Claims	1-13
Industrial applicability (IA)	Yes: Claims	1-13
	No: Claims	14-25

2. Citations and explanations

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see separate sheet

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SECTION III

- 1). Claims 14-25 relate to subject-matter considered by this Authority to be covered by the provisions of R.67.1(iv) PCT. Therefore, no opinion will be formulated with respect to the industrial applicability thereof (Art.34(4)(a)(i) PCT).

SECTION V

- 2). For the assessment of the present claims 14-25 on the question whether they are industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claims. The EPO, for example, does not recognize as industrially applicable the subject-matter of claims to the use of a compound in medical treatment, but may allow, however, claims to a known compound for first use in medical treatment and the use of such a compound for the manufacture of a medicament for a new medical treatment.
- 3). The following documents (D1-D3) are referred to in this written opinion; the numbering results from the order of citations found in the Search Report and it will be adhered to in the rest of the procedure. It will be made reference to the cited passage(s) for each citation unless otherwise specified.
- 4).
 - a) Claims 1-13 directed to a device allegedly differ from the one of D1 (filed by some of the present Inventors) in that the power shall be lower than 30 mW/cm^3 . However, this cannot be regarded as a distinguishing feature over D1 insofar that the (emission) power can be, of course, adapted to the intended need and must rather be regarded as a feature for a process not for a device. The remaining features of claim 1 do not differ from D1. Accordingly, claims 1-13 lack novelty over D1 (Art. 33(2) PCT).
 - b) Process claim 14 differ from the one of D1 in that the power shall be lower than 30 mW/cm^3 . As D1 is silent as to the power, claim 14 is novel over D1 as well as D2-D3 (Art. 33(2) PCT).
 - c) Item 4 b) also applies to dependent claims 15-25 (Art. 33(2) PCT).
- 5). An inventive step can be acknowledged for claim 14 over D1 (closest prior art document) insofar as D1 was silent as to the possibility of inducing cell death in the treated cell at that low power level. In addition, healthy cells were identified as being less sensitive to the

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method that hyperproliferative cells, so that, said method more specifically induces apoptosis on the later (see [0028], Fig. 7-8). Accordingly, claim 14 meets the requirement of Art. 33(3) PCT). This also applies to dependent claims 15-25 (Art. 33(2) PCT).